

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 225 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SWATI UMESH MODI

Versus

UMESH MOHANLAL MODI

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Appearance:

MR DEVANG T SHAH for Petitioners (orig.plaintiffs)

MR DHIRENDRA MEHTA for Respondent (orig.defendant)

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/02/99

ORAL JUDGEMENT

In this case, on 2nd March 1998, the Court issued a notice as to why this Civil Revision Application may not be allowed. This order is treated to be an order at par with Rule. Mr.Dhirendra Mehta waives service of Rule on behalf of the respondent. In the facts and circumstances of this case, the matter is taken up for final hearing right today.

2. This Civil Revision Application is directed against the order dated 5th January 1998 passed by the Civil Judge (Senior Division), Surat, below Application Exh.28, in Special Civil Suit No.225 of 1995. The petitioners herein had sought for amendment of the original plaint under Order 6 Rule 17 of the Code of Civil Procedure through the application dated 20th October 1997.

3. It is a lis between the wife and two minor children on one side as the petitioners before this Court and the husband, i.e. the respondent on the other side. At the time when the suit was filed, a sum of Rs.10,000/per month was claimed by the wife as the maintenance. During the pendency of the suit, an application dated 20th October 1997 has been moved seeking to amend the prayer on account of the hike in prices of various commodities having its consequential effect on the amount of maintenance and through the amendment, the petitioners, i.e. wife and the minor children through her, sought to revise the figure of Rs.10,000/- to Rs.15,000/- and other consequential amendments as mentioned in paragraph 1 of the amendment application dated 20th October 1997. This amendment application has been rejected by the learned Civil Judge (Senior Division), Surat. In the amendment application, various circumstances and reasons have been given and it has been submitted that the commodities of daily needs had undergone heavy price rise after the filing of the suit. Merely because this application for amendment has been moved on 20th October 1997, the learned Civil Judge (Senior Division), Surat has proceeded on the basis as if the petitioners had admitted that there is no price rise for a period of three years and eight months, i.e. from the date of filing of the suit claiming maintenance under Section 18 till the date when the application for amendment was filed. The assumption on which the trial Court has proceeded is wholly erroneous. The trial Court has also held that the application seeking amendment was belated and that she could not claim the relief for any period more than three years preceding the date of the application. In the opinion of this Court, no such law of limitation could be pleaded on the question of amendment. It will be for the Court to consider as to from what date the maintenance is to be given at the enhanced rate and for the higher sum as claimed by her, but the prayer for amendment could not be declined on the ground that an application was moved after three years. In such matters, the limitation cannot come in the way of amending the plaint. The law laid down by the Supreme

Court in this regard is very clear as per the case of Jai Jai Ram Manoharlal v. National Building Material Supply, reported in AIR 1969 SC 1267. In any case, this Court finds that there was no justification whatsoever with the trial Court in not allowing the amendment. Even otherwise, the judicial opinion on the question of amendment is that the Courts must be liberal in granting the amendments and the case which any party seeks to unfurl before the trial Court must be allowed to be brought on record in its full span. No amendment should be rejected on technical or hyper technical ground because all such amendments are subject to the contest in the main suit.

3. This Court, therefore, finds that the order dated 5th January 1998 passed by the Civil Judge (Senior Division), Surat, suffers from an error while exercising the jurisdiction in dealing with the question of amendment. The impugned order dated 5th January 1998 cannot be sustained in the eye of law and the same is hereby quashed and set aside. The application dated 20th October 1997 moved by the petitioners before the trial Court seeking amendment in the plaint is allowed. Rule is made absolute accordingly. No order as to costs.

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